

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

&

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

RFA.No. 559 of 2006()

OS.83/2003 of SUB COURT, PALA
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: APPELLANTS/DEFENDANTS 1,4 AND 7 IN THE SUIT

1. KAMALAKSHI AMMA, W/O.LATE NARAYANAN NAIR
AGED 82, MACHUKATTU HOUSE, KAYYUR KARA,
KURUMANNU, BHAANANGANAM VILLAGE, MEENACHIL TALUK.
2. NEELAKANDAN NAIR @ BALACHANDRAN NAIR,
AGED 50 OF DO. DO.
3. SHAJI, S/O.LATE NARAYANAN NAIR,
AGED 42 OF DO. DO.

BY ADV. SRI.JOHNSON MANAYANI
SRI.ROY THOMAS

RESPONDENTS: PLAINTIFFS AND DEFENDANTS 2,3,5 AND 6

1. RUGMINI AMMA, D/O.KALYANI AMMA,
VARAGAPPALLIL HOUSE, EDAMATTOM KARA,
BHARANANGANAM VILLAGE, MEENACHIL TALUK.
2. BALAKRISHNAN, S/O.RUGMINI AMMA,
DO. DO.
3. RADHAKRISHNAN, S/O.RUGMINI AMMA,
OF DO. DO.
4. GIRIJA, D/O.RUGMINI AMMA,
OF DO. DO.
5. GOPALAKRISHNAN NAIR,
S/O.LATE NARAYANAN NAIR, MACHUKATTU HOUSE,
KAYYAR KARA AND P.O., KARUMANNA, BHARANANGANAM
VILLAGE, MEENACHIL TALUK.
6. LEELA, D/O.NARAYANAN NAIR,

OF DO. DO.

7. DEVAKI, D/O.LATE NARAYANAN NAIR,
OF DO. DO.

8. PADMINI, D/O.NARAYANAN NAIR,
OF DO. DO.

BY

THIS REGULAR FIRST APPEAL HAVING COME UP FOR ADMISSION
ON 18/06/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

Kurian Joseph & T.R. Ramachandran Nair, JJ.

R.F.A.NO.559 of 2006

Dated this the 18th day of June, 2007

JUDGMENT

T.R.Ramachandran Nair, J.

This appeal is filed at the instance of defendants 1 to 4 and 7 in O.S. No.83/2003 on the file of the Sub Court, Pala. The suit is one for partition, which was filed by respondents 1 to 4 herein. The trial court passed a preliminary decree as per the judgment under appeal.

2. The plaint schedule property was owned by late Smt. Kallyaniyamma and the father of the defendants, late Shri Narayanan Nair who were sister and brother. They were allotted this property as per the partition deed No.2786/1958 and this property formed 'F' schedule in the partition deed. The first plaintiff is the daughter of late Kallyaniyamma and Smt. Kallyaniyamma died on 12.6.1968 and admittedly no document had been executed in respect of her share of the property. Shri Narayanan Nair died on 7.5.1991 and his legal representatives are defendants 1 to 7. The plaintiffs' case is that late Narayanan Nair was looking after the property for and on behalf of the plaintiffs also till his death, and as the plaint schedule property is in the joint possession and enjoyment of the plaintiffs

and defendants, partition was claimed.

3. The appellants contended that plaint schedule property is not partible. According to them, late Narayanan Nair was in possession of the entire property and he had effected improvements in the property and has been collecting income therefrom. The case set up is that he was in exclusive possession and enjoyment of the property to the knowledge of late Kallyaniyamma and the plaintiffs. According to them, after the death of Narayanan Nair, the defendants are in exclusive possession and enjoyment of the property resulting in ouster of plaintiffs. The right of the plaintiffs was thus disputed.

4. P.Ws.1 and 2 and Bws.1 to 4 were examined and documentary evidence has also been produced as Exts.A1 and A2 and Exts.B1 to B4. The property was found partible and a preliminary decree has been passed.

5. The court below has discussed the evidence elaborately. The property is having an extent of 1 acre and 19 cents in the original survey No.710/1 of Bharanganam Village. Late Kallyaniyamma and Narayanan Nair were allotted 'F' schedule to Ext.A1 partition deed of the year 1958. Both the sharers died without executing any document in respect of their undivided share in the 'F' schedule property. It is a clear case where the above parties had co-ownership and possession over the property and it cannot be presumed that deceased Narayanan Nair was having exclusive possession over the plaint schedule property. The court below found that

Ext.B1 does not relate to 'F' schedule property to Ext.A1 partition deed and even though Exts.B2 to B4 tax receipts were produced to show that late Narayanan Nair was remitting the basic tax, it was found that properties covered by those receipts are of different survey and sub divisions. Apart from the oral evidence of Dws.1 to 4, there was no documents to show exclusive possession by late Narayanan Nair.

6. The court below also found that even though the plaint description is 1 are and 54 cents, going by 'F' schedule of Ext.A1 partition deed, the extent is only 1 acre and 19 cents. It was accordingly found that the rights of the plaintiffs will be as co-owner of the said extent of property. Since the plaintiffs are having co-ownership right over the property in question, the plaint schedule property is liable for partition and the findings rendered by the court below are perfectly justified.

7. Even though the appellants contended for the position that the rights of the plaintiffs are ousted by adverse possession and limitation, there is no evidence worth to support such a case. The evidence adduced show otherwise. The court below was therefore right in finding that the

property is partible.

Hence, the appeal is dismissed without any order as to costs.

(Kurian Joseph, Judge.)

(T.R. Ramachandran Nair, Judge.)

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